THE
MADRAS LAW JOURNAL.

VOL.] SEPTEMBER, 1927. [LIII

QUICQUID PLANTATUR SOLO CEDIT.

The general rule of English Law is *Quicquid plantatur solo cedit,* that is to say whatever is affixed to the land becomes a part of the land and becomes subject to the same rights of property as the land. A necessary corollary of that rule is that a man who so affixes is neither entitled to remove it nor is entitled to compensation in respect of it. Some exceptions have been recognised by the common law itself though not in very early times and some exceptions have since been engrafted by the Legislature. In India, the maxim has at all times been held to have but a very limited application. As regards the corollary as to compensation, the Indian Law has been in some directions more liberal while in others not quite so liberal. We shall attempt to note the scope of the application of the maxim and the corollary both in England and in this country.

The first exception recognised in England is with respect to what is known as fixtures, that is to say personal chattels affixed to the land. As regards these, questions arise in England generally as between heirs and executors, between tenants for life and remaindermen and lastly between landlords and tenants. The law is most liberal in the case of tenants, less liberal in the second case and least of all in the first ; in fact in the first case, the rule is applied in all its rigour though after the recent Property Act, the question is not of much moment as both real and personal property now vest in the executor and the same rule applies as regards distribution. In the interests of trade, Courts relaxed the strictness of the rule in favour of trade fixtures. The concession does not, however, extend in favour of buildings unless they are of a temporary nature or are accessory to trade purposes. The indulgence

shown to trade is not extended to agriculture and to remedy the defect, Legislature had to step in but the result has been that a more liberal rule is enacted conferring a right to remove not only fixtures but also buildings. The Statute, at the same time, gives a right of pre-emption to the landlord. Fixtures for ornament and convenience also have been exempted from the operation of the rule and that by the common law itself. All these are merely in the nature of partial exceptions, that is to say the rule only confers a power on the tenant to remove the fixtures but so long as they continue attached, they are considered as a part of the land itself. The Common Law right to remove is also subject to the condition that the nature of the attachment must be such that the separation will cause little or no damage to the freehold or the articles removed and that the right can be exercised only during the currency of tenure except when the tenancy is of an uncertain duration in which case a reasonable time after the expiry of the lease is allowed. Under the rule enacted in the Agricultural Holdings Act the tenant's right is available in all cases for a reasonable time after the termination of the tenancy and apparently the tenant is entitled to remove though the removal might cause damage provided he is prepared to make good the damage. The benefit of the rule allowing tenants to remove fixtures is available though the fixtures are affixed after a mortgage. The mortgagor himself is not within the benefit of the rule.

As regards trees, the rule seems to be that fruit trees may not be cut by the tenant though planted by himself nor timber trees except in the case where enjoyment by cutting down timber is within the contemplation of the lease. The tenant seems to have the right to cut down certain kinds of trees that are not timber and even timber trees which show no likelihood of becoming useful timber. In this matter the rule is governed largely by usage.

In India the maxim is of very limited application, the question being rather as to what cases it applies than to what cases it does not. In *Thakur Chunder Poramanick* v. *Ramdhone Bhuttacharjee* (1), a Full Bench of the Calcutta High Court after referring to certain texts of Hindu Law and to Hedaja laid down that "according to the usages and customs of this country, buildings and other such improvements do not, by the mere accident of their attachment to the soil, become the property

1. (1866) 6 W R 228 (F B).

of the owner of the soil". They further held that "it should be laid down as a general rule that if he who makes the improvements is not a mere trespasser but is in possession under any *bona fide* title or claim of title he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil, the option of taking the building or allowing the removal of the material remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate he might possess." The case itself was that of a purchaser from a widow whose purchase was found not binding against the reversioner. Earlier cases are referred to in the judgment of the Full Bench where a similar principle was applied to co-owners including members of Hindu family building on common land. In one of those cases *Khode Ram Sharma* v. *Trilochan* (2) it is laid down that "if a member of a joint Hindu family build a brick house on ancestral land with separate funds of his own, such land would not be a property in which shares might be claimed by his co-parceners. Co-parceners would only have a claim on him for other similar land equal to their respective shares". This principle was applied recently in Madras to a case where a Hindu father built on ancestral site before the birth of his son and it was held that the building did not become joint property in which the son could claim a share. *Periakaruppan* v. *Arunachelam* (3). The rule laid down in *Thakur Chunder Poramanick* v. *Ramdhone Bhuttacharjee* (1) is approved by the Privy Council in *Narayan Das* v. *Jatindra Nath Roy* (4) which was rather an extreme case. There the question was as to whether a house built on land by the registered proprietor of an estate passed to the auction purchaser at the revenue sale. Their Lordships held that it did not. That ruling will not apply to revenue sales in Madras for the Madras Revenue Recovery Act makes the revenue a charge not only on the land but also on buildings, etc., on the land unlike the Bengal Act therein referred to. Their Lordships base the conclusion on the fact that under that Act the Crown can sell only the property which belongs to it and the

1. (1866) 6 W R 228 (F B). 2. 1 Select Reports, p. 35.
3. (1926) I L R 50 M 582: 52 M L J 571.
4. (1927) L R 54 I A 218 : 53 M L J 158 (P C).

superstructure does not belong to it and no power is reserved in the Act to sell the buildings or anything other than what belongs to the Government. The following according to their Lordships are the rights *inter se* of the owner of the land and the owner of the superstructure after the termination of the interest of the latter in the land: (*i*) The plaintiff (owner of the land) would have had the right to call upon the defendants to remove the house. If the defendants did remove the house, the value would be small and in the ordinary course would be no more than what has been called "demolition value", *viz.*, the value of the materials less the cost of removal, (*ii*) if the defendants did not remove the house, they would lose it, (*iii*) if the defendants were called upon to remove the house, they would be entitled to a reasonable time for such removal and that during that time, plaintiff would be kept out of the enjoyment of the land. Their Lordships would have this as well as the circumstance that the landlord might have been a willing purchaser to be taken into consideration in assessing the amount to which the defendants would be entitled out of the compensation money assessed for the whole land and buildings under the Land Acquisition Act. It is thus perfectly clear that the owner of the superstructure is entitled to a reasonable time to remove the superstructure after the termination of his interest and his right is not limited to its removal during the continuance of the interest. In *Rama Aiyar* v. *Narayanaswami Aiyar* (5) an alienee from a widow who was found not to have had *bona fide* belief as to his title at the time of effecting the improvements was given by the decree time to remove them. In *Narayan* v. *Bholagir* (6) a purchaser with notice of prior agreement of sale as well as the sale in pursuance thereof was allowed to remove the materials In *Beni Ram* v. *Kundan Lal* (7) the Privy Council allowed a tenant time to remove buildings put up by him. In *Ismai Kani Rowthan* v. *Nazarali Sahib* (8) the same view is taken though there are certain unintelligible observations in the judgment sounding in the contrary sense which led to considerable difference of judicial opinion, but the view that ultimately prevailed was that the tenant was entitled to remove after the termination of the tenancy but if he was given reasonable opportunity to do so after being deprived of possession and

5. (1925) 51 M L J 313. 6. (1869) 6 B H C 80.
7. (1899) L R 26 I A 58. 8. (1903) I L R 27 M 211 14 M L J 25.

failed to avail himself of the opportunity so given, he has no further right to the materials. That view is in accordance with the view expressed by the Privy Council in *Narayan Das* v. *Jatindra Nath* (4). It is difficult to find a legal basis for such a conclusion. Under the English Law the rule is that fixtures form a part of the holding and the tenant is given in certain circumstances a right to remove them. Such being the case his failure to remove might disentitle him to make any further claim in respect of it. In India, where the theory is that the building does not become a part of the freehold, the mere fact that the tenant did not remove in time could not transfer the ownership in it to the landlord. The decision of the Privy Council, however, seems to conclude the matter. The right to remove during the continuance of the lease is recognised by S. 108 of the Transfer of Property Act and that is in no way inconsistent with the right to remove at or after eviction recognised by the decisions.

In *Premji* v. *Haji Cassum* (9) a person who had encroached on the plaintiff's land and had built a house on it was held entitled to remove the building and if he did not do so within a year of the decree the time given to him to remove the building, it was ordered that the plaintiff might get it removed at the latter's expense. Sargent, C. J., observes therein thus: "It is a well-established law in England that if a stranger builds on the land of another although believing it to be his own, the owner is entitled to recover the land with the building on it unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to an acquiescence to his building on the land. This is also the law in India with the exception that the party building on the land of another is allowed to remove the building." The assumption on which the case proceeds is that the defendant was a person that *bona fide* believed that the property was his own though the facts recited seem to show that he was a mere trespasser. In *Ganga Din Sonar* v. *Jagat Tiwari* (10), which was a case of trespass pure and simple, Mr. Justice Sunder Lal expresses the opinion that even in such a case the decree must give leave to the defendant to remove materials. [See *Bhupendra Kumar* v. *Pyari*

4. (1927) L R 54 I A 218: 53 M L J 158 (P C).

9. (1895) I L R 20 Bom. 298. 10. (1914) 25 I C 198.

Mohan Roy (11).] According to Mr. Justice Sankaran Nair not only tenants and *bona fide* possessors of land but even trespassers are entitled to this. Under the Muhammadan Law, that is undoubtedly the rule. [See *Secretary of State* v. *Charlesworth Pilling and Co.* (12)]. Even under the Hindu Law though Narada restricts the right to tenants, as explained in 33 Sacred Books of the East, 143 footnote, the reason of the rule that a trespasser cannot remove is said to be that the owner of the land is thereby compensated for the occupation, implying clearly that the trespasser is the owner of the building.

In *Vasudevan* v. *Chathu Achan* (13) buildings and trees are put on the same footing. It was a case of a Malabar tenant claiming to remove trees planted by him and it was held that the custom that the landlord is bound to pay compensation did not take away the tenant's right to remove the trees conferred by the general law and recognised in S. 108 of the Transfer of Property Act. The Full Bench reads S. 108 as recognising this right unqualifiedly except to this extent, *viz.*, that the tenant is bound to restore the land in the same condition in which it was given to him. [See *Mofiz Sheikh* v. *Rasiklal Ghose* (14)]. It is presumed that in the case of a plantation leased to a tenant, the tenant may not be entitled to any trees planted by him in the ordinary course of management to keep the plantation as such in tact.

The rule applicable to tenants would also apply to mortgages. In *Raghunandan Rai* v. *Raghunandan Pande* (15) a mortgagee was held entitled to cut down trees planted by him which were not an improvement for which the mortgagor was bound to compensate. In *Nageshar Rai* v. *Nand Lal* (16) a different view seems to be taken without advertence to the decision of the Full Bench but the ground on which the judgment is put, *viz.*, that the trees could not be removed without injury would seem to bring the case within the general rule. A question is raised in some Allahabad cases that such trees would be an accession within the meaning of S. 63 of the Transfer of Property Act and if they cannot be separately enjoyed and if the accession was not made in circumstances such as would bind the mortgagee to pay compensation, the mortgagor is entitled to have them without paying compensation (see the last cited case

11. (1913) 40 I C 464. 12. (1901) I L R 26 Bom. 1.
13. (1900) I L R 24 M 47 10 M L J 321 (F B).
14. (1910) 12 C L J 246. 15. (1921) I L R 43 A 638 (F. B).
16. (1925) I L R 48 A 70.

and *Parmanand Pandit* v. *Mata Din* (17)]. Though it cannot be confidently affirmed that S. 63 does not proceed upon the English view as to things attached to the land, the section presents no obstacle to their not being regarded as accessions in accordance with the general theory of the Indian Law. The section does not say what are accessions. In fact, S. 108 similarly provides that accessions are to be deemed to be comprised in the lease but this provision is not considered inconsistent with the other provision that the lessee may remove anything attached to the earth by himself provided he leaves the property in the state in which he received it. The sections must be confined to cases where the non-application of the maxim may not help, for instance to the case of repairs or improvements which do not form distinct structures or which involve great detriment to the corpus in the act of removal. The section cannot be said to be happy. It does not provide in the case of possessory mortgages other than usufructuary for the setting off the interest on the cost against the profits.

In some cases that come before the Indian Courts, the situation is complicated by the peculiar incidents of the estate of the person that improves the property; for instance, if the widow builds on the land belonging to the husband with the income of the estate, the presumption would be that she wanted to incorporate it with the estate and as such it would form an accession to the estate. In some circumstances the same presumption might arise if the buildings are raised by a member of an undivided Hindu family with his own funds. But these complications apart, the general rule ought to be that the buildings erected by a life-owner or a joint owner would not become part of the land. Some of the observations in *Kandarpa Nath* v. *Jogendra Nath* (18) might look at first sight as laying down a principle opposed to the general trend of authority for Mr. Justice Mukherjee is reported as saying there that "as a general rule improvements made on property by a life-tenant thereof attach to the estate and pass to the reversioner or remainderman without any liability on his part to make compensation therefor". But on examination of the facts of the case, it will appear that the improvements were in the nature of reclamation and could not come within the benefit of the rule as to fixtures above referred to. The claim was merely a claim

17. (1925) I L R 47 A 582. 18. (1910) 12 C L J 391.

for the cost of the improvements and the rule laid down is wholly unexceptionable.

S. 51 of the Transfer of Property Act which deals with improvements applies only to transferees and has no application to persons who claim under some other title, such as heirship, nor according to the great bulk of authority to transferees who claim less than absolute title. Act XI of 1855 applies only to cases where the English Law is applicable, though it is not confined to transferees. On the other hand it extends to persons who hold the land *bona fide* in the belief that they have an estate in fee simple or other absolute estate and their heirs or assigns or other under-tenants. There is no such restriction in the Indian rule relating to buildings and other affixtures which applies without regard to the quantum of interest claimed by the person making the improvement or subject to what has been said above the state of his belief as regards his title or the source of his alleged title.

The rule as to the liability to pay compensation for improvements, we shall discuss in another article.

SUMMARY OF ENGLISH CASES.

MARSDEN *v.* EDWARD HEYES, LTD., (1927) 2 K B 1: 96 L. J. K. B. 410 (C. A.).

Landlord and tenant—Oral tenancy from year to year—Implied contract to use premises in tenant-like manner—Structural alterations—Damages.

"There is an implied contract by a tenant to use the premises let out to him in a tenant-like or husband-like manner and to deliver them up at the end of the term unless prevented from so doing by the act of God. To use the premises in a tenant-like manner means that a tenant will not make such structural alterations in the premises as will change their character. If a dwelling-house is let and something which is not a dwelling-house is delivered up, the contract to deliver up in a tenant-like condition is broken."

Where the tenants holding under an oral tenancy from year to year removed the partition-wall, the fireplaces, staircase and windows in the building and turned the ground floor into one large shop and also made other structural alterations,

Held, that the tenants, having completely altered the character of the premises, were liable in damages for voluntary waste.

GREER *v.* DOWNS SUPPLY CO., (1927) 2 K. B. 28 : 96 L. J. K. B. 534 (C. A.).

Principal and Agent—Sale of goods—Third party dealing with agent as principal—Set-off—Doctrine of constructive notice.

The doctrine of constructive notice cannot be extended to commercial transactions. Thus if one party to a purely commercial transaction makes a contract with another in ignorance of the fact that the latter is an agent merely and in the honest belief that he is the principal, it is generally of no use to say he was negligent in entertaining his honest belief.

The respondent had sold goods to one *G* and had not been paid for them and was out of pocket to the extent of £17. *G* came to him and asked him if he might sell him some timber and the respondent hoping to get payment by means of a set-off and honestly believing that he was making a contract with *G* agreed to buy certain timber upon the terms that he should only pay the difference between the price of the timber and £17. The appellant sued for the value of goods sold and delivered.

Held, that the appellant was bound by the term as to set-off and that there was nothing to estop the respondent from relying on such a term.

Manchester Trust v. *Furness,* (1895) 2 Q B 539 applied.

LEVENE *v.* INLAND REVENUE COMMISSIONERS, (1927) 2 K. B. 38 : 96 L J K B 457 (C. A.).

Income-tax Act, 1918 (8 *and* 9 *Geo.* 5, *c.* 40), *S.* 46—*Meaning of the expression "ordinarily resident"—British subject going abroad but spending part of the year in the United Kingdom—Liability for assessment to income-tax.*

Where a British subject living in the United Kingdom till the end of 1919 went abroad but continued to visit and stay in the United Kingdom for periods of about five months in every year and it also appeared that he had no fixed place of abode anywhere,

Held, affirming a judgment of Rowlatt, J., that he was a person "ordinarily resident" in the United Kingdom within the meaning of S. 46 of the Income-tax Act of 1918 and that he could be assessed to income-tax.

Per *Lord Hanworth, M. R.*—"To find residence it is not necessary to find a building or 'seat' as that word is sometimes

used. It must depend on questions of degree and of fact.... I suggest as a characteristic factor for consideration to ascertain if the suggested alternative place of residence is one which the subject seeks willingly and repeatedly in order to obtain rest or refreshment or recreation suitable to his choice....... Another fact may be found—if he returns and seeks his own fatherland in order to enjoy a sojourn in proximity to his relations and friends."

LYSAGHT v. COMMISSIONERS OF INLAND REVENUE, (1927) 2 K. B. 55 : 96 L. J. K. B. 462 (C. A.).

Income-tax Act, 1918 (8 *and* 9 *Geo.* 5, *c.* 40), *S.* 46—"*Ordinarily resident*"—*Purely business visits—Homelife abroad—Finding as to residence, question of law.*

L who had changed his homelife from England to Ireland came over to England unaccompanied by his wife for short periods of a week in each month for purely business purposes. He had a small banking account in England and was a member of a London club.

Held, by the Court of Appeal (Lawrence, L. J. dissenting) reversing a judgment of Rowlatt, J., that *L* was not "ordinarily resident" within the United Kingdom and was not liable to be assessed to income-tax under the Income-tax Act of 1918.

Per *Lawrence, L. J.*—"The fact that the appellant (*L*) stays regularly in England for about three months of the year for the discharge of his duties as the servant of an English company in my opinion constitutes him a person who is both 'resident' and 'ordinarily resident' in the United Kingdom."

Held also that the meaning of residence in the Income-tax Act being a question of law the Court can review the result which the Commissioners had held to follow in law upon the facts found.

Bater's Case, (1922) 2 A C 1 followed.

BRITISH AND NORTH EUROPEAN BANK, LTD. v. ZALZSTEIN, (1927) 2 K. B. 92 : 96 L. J. K. B. 539.

Banker and customer—Book entries by bank manager—Customer relying on payment disregarding debit—Validity.

"An entry in a pass book is not in all cases conclusive and binding on the bank or on the customer; each case must be judged on its particular facts, although the customer in whose

favour the entry stands starts with the advantage that *prima facie* it is an admission by the bank in his favour...... In every case where it is sought to treat a mere book entry as a payment some other circumstance must be present and relied upon to enable the customer in whose favour it is made to succeed, either some express previous authority to pay, or some communication of the making of the entry to the customer or some acting on it by him. There must be something in the nature both of a payment by one party and receipt by the other or some alteration in his position by the customer."

Where the manager of a bank made certain book entries for his own purpose to deceive the auditors and neither the bank nor the customer knew anything about the transaction and the customer never objected to the accounts as delivered to him but pleaded in a suit on the accounts that he was entitled to rely on the payment to his credit disregarding the debit :

Held, that there was no payment intended as such either by the bank manager or by the customer and that therefore the plea set up by the latter was unsustainable.

WALLEMS REDERIJ A.|S. *v.* WM. H. MULLER & CO., BATAVIA, (1927) 2 K. B. 99.

Shipping—Charterparty—Charterer's failure to load full cargo—Option of shipowner to load other cargo—Delay of voyage—Deviation.

It is an implied term of every charter that if the charterer fails to fulfil his duty in shipping the cargo that he is bound to ship, the shipowner is at liberty to fill up the space in the ship which the charterer has left vacant if in doing so he is acting reasonably. The best test of the reasonableness of such action by the shipowner is, if to do so will diminish his pecuniary loss arising from the fault of the charterer and so diminish the damages that the charterer will be liable for. Consequently the shipowner has an implied liberty to delay the charter voyage by the period of time reasonably and necessarily occupied in taking in that substituted cargo and such delay does not amount to deviation so as to disentitle the shipowner from claiming damages in *lieu of dead freight.*

LAWRENCE *v.* HAYES, (1927) 2 K. B. 111 : 96 L. J. K. B. 658.

Practice—Set-off—Suit by assignee of debt—Debtor's claim to unliquidated damages against assignor—Merger of claim in judgment.

The plaintiff claimed as assignee of one *L* instalments of a debt accrued due and payable by the defendant to *L*. The defendant admitted the debt but pleaded that he had a claim against *L* for unliquidated damages arising under the same contract as that under which his indebtedness to *L* arose and claimed to set it off against the plaintiff's claim. The plaintiff thereupon contended that the claim for unliquidated damages had merged in a judgment obtained by the defendant against *L* prior to the assignment and that the same was a bar to the plea of set-off.

Held, that the merger of the cause of action against the assignor in the judgment would operate only as between the parties to that cause of action and that it did not have the effect of depriving the defendant of his right to set up the plea of set-off and counter-claim as against the plaintiff.

O'CEDAR, LTD. *v.* SLOUGH TRADING CO., (1927) 2 K. B. 123.

Landlord and tenant—Grantor not to derogate from grant—Unilateral covenant.

The principle that a grantor cannot derogate from his grant cannot be extended to apply to anything done by a lessor upon adjoining land which, while not affecting the demised premises or their user in any way merely renders it more expensive than it was before for the lessee to carry on his business on the demised premises.

Held also that the inclusion in the lease of the covenant by the lessees not to do anything on the demised premises which might make it more expensive for the adjoining premises does not give rise to an implied covenant on the part of the lessors not to use the adjoining premises so as to increase the burden on the demised premises.

MORGAN *v.* LIVERPOOL CORPORATION, (1927) 2 K. B. 131 (C. A.).

Landlord and tenant—Covenant for repair—Notice.

Where there is a covenant on the part of the landlord to keep the premises in repair the tenant must give notice to the landlord of the latent as well as the patent defects, whether or not the landlord has the means of access. Where no such notice is given no responsibility attaches to the landlord in respect of the covenant for repair.

THE KING *v.* GRAIN. *Ex parte* WANDSWORTH GUARDIANS, (1927) 2 K. B. 205 : 96 L. J. K. B. 563 (C. A.).

Local Government—Surcharge and disallowance—Payment of gratuity—Superannuation allowance—Power of auditor to disallow and surcharge.

In pursuance of certain circulars from the Minister of Health a Board of Guardians granted a gratuity to the Registrar of Births and Deaths. The auditor did not question it at the audit of accounts. The Guardians subsequently paid superannuation allowance to the Registrar on the same basis and the auditor disallowed the portion based on the gratuity. He also surcharged some of the Guardians under S. 32 of the Poor Law Amendment Act, 1884.

Held, affirming a decision of the Divisional Bench in (1927) 1 K. B. 540 that the payment having been sanctioned by the Government the auditor had not the power to discharge. The Court did not express any opinion on the other question whether there could be a surcharge only in cases of negligence or misconduct on the part of the person accounting.

In re PAYNE. TAYLOR *v.* PAYNE, (1927) 2 Ch. 1: 96 L J. Ch. 291.

Will—Construction—Residuary estate conveyed to sons with a gift over to their children—Son dying childless—Estate undisposed of.

The testator by his will provided as follows:—"My trustees shall stand possessed of my residuary fund in trust to divide the same and the investments thereof into five equal shares and to appropriate one of such shares to each of my sons now living whether such son shall survive me or not, and so that any reference hereinafter contained to the shares of my respective sons in my residuary fund shall be deemed to apply and have reference to the shares hereinbefore directed to be appropriated to them respectively, whether they shall respectively survive me or not, provided always and I direct that the share so directed

to be appropriated to each of my said sons respectively shall not vest absolutely in them or in their representatives, but shall be retained by my trustees and held upon the trusts hereinafter mentioned." The testator further directed that the trustees should hold the residuary fund on certain trusts for their lives and that after the son's decease, or after the testator's decease in the case of sons predeceasing him, they should hold the respective share of the sons on trust for their children in equal shares. He also empowered his sons who survived him to revoke or alter the shares in which their children should divide the residuary estate. The testator died in 1917 leaving five sons, one of whom died issueless in 1926 after bequeathing his entire estate to his wife.

Held, that the share of residue directed to be appropriated to one of his sons who died without issue was undisposed of and that the same did not pass to the son's personal representative.

Rule in *Lassence* v. *Tierney,* (1 Mac & G. 551) and *Hancock* v. *Watson,* (1902) A. C. 14 held to be inapplicable.

WILLIAMS *v.* BARTON, (1927) 2 Ch. 9 : 96 L J Ch. 355.

Trust—Trustee making personal profit by using fiduciary position—Liability to account.

The defendant was employed by a firm of stockbrokers. The terms of his employment were that on his side he was bound to give the firm his services in connection with the Bank of England transfer work; on the firm's side they were to pay him half the commission earned by the firm on all such work introduced by him to the firm as they were willing to carry out. The defendant was appointed one of the trustees of a will. When it became necessary to have the trust securities valued on the death of the testator and on a later occasion, the matter was entrusted to the firm of stockbrokers in which the defendant was employed and at his instigation. The defendant took no part in making the valuation or in fixing the fees but obtained one-half of such fees according to the terms of his employment. The co-trustee claimed that the money paid to the defendant must go to the trust estate.

Held, applying the principle that a trustee is not entitled to get any personal profit by availing himself of his position, that the defendant should treat the fees earned by him as part of the testator's estate. His duty as trustee and his interest in

an increased remuneration are in direct conflict; as trustee it is his duty to give the estate the benefit of his unfettered advice in choosing the stockbrokers while as the recipient of half of the fees to be earned by the employer firm on work introduced by him his obvious interest is to choose or recommend them for the job.

Bray v. *Ford,* (1896) A. C. 44 applied.

In re Cleveland's Settled Estates, (1902) 2 Ch. 350 explained.

LACTEOSOTE, LTD. *v.* ALBERMAN, (1927) 2 Ch. 117 : 96 L. J. Ch. 305.

Trademark—Assignment of part of business—Infringement.

A purchaser of a trademark becomes owner of it only if he becomes at the same time purchaser of the manufactory or the business concerned in the goods to which the mark has been affixed. Where a French manufacturer assigned his trademark in certain manufactured goods to the plaintiffs together with the goodwill of the business and the same was registered as a new trademark in England but the assignor continued to manufacture and sell goods under the old label which was similar to the new one and the defendant purchased the same in France and sold them in England :

Held, that the assignment was not in effect of the entire business carried on in France, that there was no infringement of the trademark of the assignee and that such a trademark being invalid in law must be expunged from the register of trademarks.

SEYMOUR *v.* REED, (1927) A. C. 554.

Income-tax—Professional cricketer—Payment of proceeds of benefit match—Personal gift or income—Income-tax Act, 1918, *Sch. E, R.* 1.

A professional cricketer was employed by a club. The terms of his employment did not entitle him to a benefit but they provided that if a benefit were granted the club should have a voice in the application of the proceeds. A benefit match was held about the time the cricketer contemplated retirement and the net proceeds together with other sums obtained by public subscription were invested in certain securities and subsequently paid over to the cricketer. The question arose whether the proceeds of the match fell within the description

contained in R. 1 of Sch. E of "salaries, fees, wages, perquisites or profits" so as to be liable to income-tax under the Income-tax Act, 1918.

Held, by the House of Lords (Lord Atkinson dissenting) that the net proceeds of the benefit match should be regarded as a personal gift to the cricketer and not as income from his employment and that there was no liability to assessment to income-tax in respect of that amount.

Per Lord Atkinson.—"When no reason is shown for the gift to an official.... of the large and substantial prize given to him through the medium of a benefit match, it must in reason be assumed that it was given to him for the efficient and satisfactory discharge of the duties he was employed to discharge, and, if so, that the reward which accrued to him came to him from his employment."

Decision of the Court of Appeal in (1927) 1 K. B. 90 reversed; judgment of Rowlatt, J., in (1926) 1 K. B. 588 restored.

McDOWELL *v.* STANDARD OIL CO., (1927) A. C. 632.

Trademark—Registration—Similarity in name—Meaning of expression "calculated to deceive"—Trade Marks Act, 1905, *S.* 11.

The appellant an oil merchant was desirous of registering the invented word '*Nuvol*' as a trademark in respect of lubricating oils. The respondents who had registered the invented word '*Nujol*' in respect of certain medicinal preparations objected on the ground that it was calculated to lead to confusion between the two kinds of goods sold. There was no evidence to show that the appellant had purposely adopted the proposed trademark with any dishonest intention. Besides the similarity in the names it appeared that the goods consisted of petroleum the only difference being in the degree of refinement. The Registrar refused registration.

Held, by the House of Lords affirming the decision of the Court of Appeal that there being risk of confusion registration of the trade name was rightly refused by the Registrar.

Per Viscount Cave, L. C.—It is quite clear that the words "calculated to deceive" which are found in S. 11 of the Trade Marks Act, 1905, do not mean "intended to deceive" but "likely (or reasonably likely) to deceive or mislead" the trade or the public...... The burden of proving that a proposed

trademark is not likely to deceive lies upon the applicant and.. ... if that proof is incomplete and the matter is *in dubio,* the application may be refused. I would add that registration under the Acts is a matter of discretion and the decision of the Registrar, though not conclusive, must carry considerable weight with the Court.

SALVESEN OR VON LORANG *v.* ADMINISTRATOR OF AUSTRIAN PROPERTY, (1927) A. C. 641.

Foreign judgment—Divorce proceeding—Law of domicil —Judgment in rem.

The status of married persons as dependent on divorce apart from nullity proceedings is a matter for which the Court of their *domicil* is the appropriate Court and its decree is not only valid but conclusive. Such a judgment is a judgment *in rem* and is binding on the English and Scottish Courts unless it is proved to have been the result of fraud or collusion.

Per Viscount Dunedin.—"In order for a foreign decree to be immune from disturbance by an English (or Scottish) Court it must be pronounced between persons subject to the foreign jurisdiction, and deal with a matter with which the Court is competent to deal, and it must not offend against English ideas of substantial justice."

A. H. BULL & CO. *v.* W. AFRICAN SHIPPING AGENCY AND LIGHTERAGE CO., (1927) A. C. 686.

Contract of hire—Hiring of lighter—Lighter-boys placed under control of hirers—Negligence—Loss of lighter—Action for damages—Maintainability.

The appellants let on hire to the respondents a lighter. There was no written agreement of hiring but part of the agreement was that the lighter should be as usual manned by two lighter-boys, that is coloured labourers. These persons were from the moment of transfer out of the control of the appellants and subject to the orders and under the control of the respondents. Among the duties to be performed by them was the obedience to all orders regarding the attachment of the lighter to the steamship which was being loaded and it was also necessary that they or one of them should be on board to do what was required should the ropes be unable to stand the strain of the current. Three days after the transfer both the

labourers decamped during night and the barge having parted her moorings drifted with the current out of the harbour, ran ashore and broke up before she could be salved. In an action by the owners for damages for loss of the lighter:

Held, that the loss was due to the negligence of labourers who were at that time under the control of the hirers and that consequently the claim for damages by the owners should be allowed.

JOTTINGS AND CUTTINGS.

Lord Haldane on the Judicial Committee.—Lord Haldane's interest in the Judicial Committee, and his hopes for its future absorption of the judicial business of the House of Lords are well known. Some years ago—in 1922—he contributed a very interesting article on the subject to the *Cambridge Law Journal.* This month he addresses a larger public through the pages of the *Empire Review.* And he is not the only authority to expound the working of a tribunal which in the extent of its jurisdiction and the importance of its judgments is rivalled only by the Supreme Court of the United States. Lord Shaw has done the same; quite recently there have been the illuminating lectures by Professor J. H. Morgan, K. C., which were printed in these pages; and a few months ago we noticed Mr. Herbert Bentwich's article on "The Judicial Link of Empire" in the *English Review.* To take another example, Mr. Justice Duff, of the Supreme Court of Canada, in an Address printed in the *Canadian Bar Review* for June, 1925, recounted the great names which have adorned the Court of which, as a representative of the Dominion, he is now a member.

—*The Law Journal,* July 9, 1927, p. 23.

Great Privy Council Judges.—It is interesting to compare the names given by Mr. Justice Duff in the Address just referred to with those which Lord Haldane mentions. Lord Lyndhurst, said to have had "the finest judicial intellect our race has produced"; Parkes and Willes, "each a living incarnation of the Common Law"; Lord Kingsdown, who, "according to the tradition of Downing Street, was three times offered the Lord Chancellorship, which he as often refused"; Jessel, who is said to have only once reserved a judgment—we believe it was twice—and never to have been reversed—the truth or pretty near it; Lord Cairns, "with hardly a peer in mastery of the

whole field of jurisprudence"; Lord Selborne, "whose name is always rightly coupled with that of Lord Cairns in judicial renown"; Westbury, "whom all men of his time counted a genius"; Watson and Macnaghten, "the Scotsman and the Scotch-Irishman, both possessed by the very genius itself of law and judicature". So far Mr. Justice Duff. And Lord Haldane, towards the end of his description of the Judicial Committee, says:

"It is only what one might expect to find that a tribunal with such varied duties, and working in such an atmosphere, should have produced at times great personalities. Looking back over the interval since it was given its present form by the Act of William IV, the list of the names of its Judges contains those of a succession of impressive personalities. Lyndhurst, Brougham, Cottenham, Kingsdown, Campbell, Westbury, Hatherley, Parke, Willes. Cairns, Selborne, Blackburn, Watson, Hobhouse, Herschell, Macnaghten, Davey, are among the names in that list."

Lord Haldane is less descriptive than Mr. Justice Duff, so he gets in more names, but substantially the lists are the same. They are lists of Privy Council Judges of the Victorian era who impressed greatly their contemporaries. They found sympathetic writers to pass on their names—writers such as Bagehot and Bryce and Atlay. Let us hope that the Judges of the present day will be as strikingly presented to posterity. But as to amalgamating the Judicial House of Lords with the Judicial Committee, we are not sure, though, in certain eventualities, it may be the only course.

—*The Law Journal*, July 9, 1927, p. 24.

Who is an Esquire ?—So far there is no legal or other authoritative definition of the meaning of the word. Sir Edward Coke thought that everybody who had the legal right to call himself a gentleman was an esquire and that a gentleman was the bearer of an inherited or acquired coat-of-arms; but nobody else has ventured upon a definition, although ten classes are mentioned by the writer of the article on "Esquire" in the *Encyclopaedia Britannica*. Sons of peers, according to black letter lawyers, are certainly esquires, and so are the eldest sons of younger sons of peers and their eldest sons in perpetuity; so also are the eldest sons of baronets and knights. And it is generally agreed that barristers, justices of the peace, mayors (while in office), persons holding a superior office under the Crown, and Attorneys in Colonies where the Attorney and counsel are one, of the select company.

—*The Law Journal*, July 9, 1927, p. 41.

Learned Friends Fall Out.—It must be a great while since any member of the English Bar called out a learned friend to an open-air engagement involving weapons for two and coffee for one ; and the duel between MM. Freaud and Cousin, both advocates who occasionally act as deputy judges, has aroused great interest amongst English lawyers. The quarrel began with words in Court, was continued in the precincts of the Court with fists, and ended in a duel with swords in a quiet spot in the neighbourhood of Paris. Report says that they fought with the utmost fury for six rounds ; at the end of which Maitre Freaud being slightly wounded in the arm the doctors forcibly stopped the fight, but were unable to end the feud.

Another forensic quarrel is reputed to have pursued a more novel or more civilised course; wherein a woman advocate sued a male colleague for the French equivalent of defamation in that he persisted in addressing and describing her as "Monsieur," presumably with the object of drawing unfavourable attention to her closely cropped head, her eye-glass and masculine cut and appearance of her clothing. In England the woman barrister is entitled to the designation of gentleman, but that is not quite the same thing. The innuendo, if any, in the Frenchwoman's claim would make interesting reading, but I have not seen it.

—*The Law Journal,* July 9, 1927, p. 41.

The Style of the L. C. J.—Early this week, in the Lord Chief Justice's Court, a newly-appointed silk was defending with great skill and imperturbability a wicket which, from the batsman's point of view, had little merit. As part of his defence he put forward a proposition which appeared to shake not only the long row of junior counsel, robed and unrobed, but the rear ranks of solicitors and students. All craned forward to observe how the L. C. J. would take it.

He took it with judicial calm. He asked one or two questions to clear up certain ambiguities which appeared to lurk in the astounding proposition. So revised, he wrote it down in all its naked simplicity. Then he asked one final question, which began as follows:—"Assuming for the moment—and only for the moment—"

Phrases of this kind fall aptly and gratefully from the lips of the Lord Chief Justice and add distinction to his good law and sound judgments. Moreover, he possesses the rare faculty of

giving even to the worst of cases not only a patient, but a pointed hearing.

—*The Law Journal,* July 16, 1927, p. 61

The Doctor must tell.—The position of a medical man called upon in the witness box to disclose information acquired by him in the course of attendance upon a patient, to which we referred last week in connection with the recent debate of the Medico-Legal Society on the subject, came up in a concrete form at Birmingham Assizes last week, when a doctor from a hospital was subpœanaed to produce documents showing the medical history of a man who had been treated at the hospital. As is well known, the Ministry of Health, working with local authorities, endeavour to persuade persons suffering from certain diseases to submit themselves to treatment by advertising in the plainest terms that treatment will be given under conditions of secrecy, and this undertaking is carried out, in some centres at any rate, by a system under which the applicant is allotted a number and the documents giving details of treatment, etc.; bear the number and not the name; so that the medical adviser is himself unaware of the patient's identity. Apparently the case in question was one of these but Mr. Justice McCardie held that this made no difference, nor did the fact that the witness producing the documents was not the doctor who had made the entries. As a matter of law there seems to be no sort of doubt that the learned Judge was right; but whether or not the law in this respect should be altered is another question. It would, of course, be difficult, if not impossible, if a change in the law were to be made, to limit it to cases in which hospitals or public clinics were concerned; that would be to discourage persons from consulting their own doctors and would tend to throw an additional burden on the State. The problem really is whether it is advisable in the interests of the health of the community to run the risk of a failure of justice in particular cases by excluding a certain class of evidence; there is much to be said for each view; and the matter is one that will, no doubt, engage the attention of Parliament before very long.

—*The Law Journal,* July 23, 1927, p. 65.

The Lords' Appellate Jurisdiction.—The current flood of proposals for the reform of the House of Lords contains no suggestion that its appellate jurisdiction as at present consti-

tuted should be altered or curtailed. This appellate jurisdiction is a very ancient and venerable thing. By 14 Ed. 3, c. 5, it was enacted that one prelate, two earls, and two barons should be entrusted with the King's Commission to hear by petition all complaints of delays or grievances in the Courts of King's Bench, Common Pleas and Exchequer; and by 27 Elizabeth, c. 8, a right of appeal to Parliament was given from the decisions of the Court of Exchequer Chamber.

The question of the original jurisdiction of the Lords was mightily discussed and finally abandoned in the seventeenth century ; and thereafter it continued peacefully to exercise its rights as a Court of Appeal. In Lord Eldon's days this appellate jurisdiction was fearfully and wonderfully exercised; for in effect the Lord Chancellor would sit with one lay and one spiritual peer, hastily impressed and both unknowing, and hear appeals from the Chancellor's own judgments.

—*The Law Journal*, July 23, 1927, p. 80.

When the House of Lords (H. L.) was abolished.—Lord Hatherley's Bill, in 1872, for establishing one Supreme Imperial Court of Appeal, which should perform the duties of the House of Lords and sit continuously, was opposed by Lord Cairns, who greatly loved the "life peer" arrangement. But in 1873 Lord Hatherley's plan was in substance adopted in the Judicature Bill of that year, and the House of Lords awoke one fine morning to find that they had abolished themselves for judicial purposes. And so abolished they remained until Lord Cairns' Appellate Jurisdiction Act of 1876, which set the House of Lords once more upon its judicial legs, fortified by the assistance of the "Lords of Appeal in Ordinary". Since then it has lived peacefully and in good repute.

—*The Law Journal*, July 23, 1927, p. 80.

Kissing the Book.—"O" in a recent forensic fable dealt with the strange case of the careful solicitor who provided the spermaceti candles, the white cockerel, the sacrificial knife, and other material which he deemed necessary for the appropriate swearing in of his Chinese witness. Less bloody, but hardly more rational must our native practice of "kissing the book" appear to the uninformed pagan traveller. It is curious that this part of the ceremony of oath-taking should have survived so long in England and Ireland. In Scotland the invocation of

the Deity with uplifted hand suffices. A similar practice obtains in France, Belgium and Austria. The Book is used in Spain and Italy in the cases of all witnesses, and for Jewish witnesses in Austria, but it is only taken in the hand. In Germany, apparently, they swear not at all. For some consciences in this country affirmation is of course enough; and all witnesses may avail themselves of the privilege conferred by the Oaths Act, 1888, or demand to be sworn in the form and manner in which the oath is usually administered in Scotland. Yet many witnesses, responding to the sharp command of the Clerk not only take the book in their right hand, and swear, but although it has been unnecessary since 1909, complete the ceremony by kissing the book with a distressing gusto, however uninviting the cover of the volume may be.

—*The Law Journal,* July 23, 1927, p. 80.

The Lord Chancellor's Double Role.—Lord Cave, whose able interventions in the debates in the House of Lords have of late been frequent, is, if we may be permitted for a moment to exclude Lord Birkenhead, the mainstay of the Government in the Upper House. The idea of a political Lord Chancellor is of such long standing in England that one is apt to forget that the position of the Lord Chancellor is curiously anomalous. He may be, and has often been, the chief spokesman and the ablest member of his political party. At the same time he fills the highest and most influential judicial office in the State; and despite the accepted theory that the judiciary and the legislation should be independent, he alone of all the judges must hold the political views of the reigning Government. The holders of all other judicial offices of profit, Recorders and a few others only excepted, are rightly disqualified if they become even candidates for Parliament. There was a time, of course, when the Chancellor "had no law," and clergymen alone held the Great Seal. It was only after the Reformation, in 1538, that the lay and ennobled Chancellor was invented, and Lord Audley of Warden became the first of his class.

—*The Law Journal,* July 30, 1927, p. 81.

The Chancellor and the Lords.—It is apt to be forgotten that the Chancellorship carries with it no obligation of ennoblement; and it is worth remembering, since the great majority of lawyers are financially unable to sustain the customary burdens

of a peerage, which also nowadays carries with it the disadvantage of partial political extinction. Lord Campbell, in his "Lives of the Chancellors," points out that the Woolsack is without the precincts of the House of Lords, and is, in fact, intended for the accommodation of a Chancellor who is not a peer. The proper seat for the peer-Chancellor is at the top of the Dukes' bench on the left of the Throne, and it is only in consequence of the convenience of its position that he sits upon the Woolsack. So Lord Cave, when he desires to address his fellow peers, takes his stand upon the floor of the House. The commoner-Chancellor would, of course, suffer some disadvantages. He would have neither vote nor voice in the House of Lords; and his duties would be confined to putting the question and communicating resolutions in accordance with the directions of the House. He could not take part in its judicial business. But on the fall of the Government he would be able to return to the more stirring arena of the House of Commons with his pension of £5,000 a year. And, while Chancellor, he would enjoy the privilege of trial as a peer for any felonious misconduct which he might be unusual enough to commit.

—*The Law Journal*, July 30, 1927, p. 82.

King's Bench Vacancies.—The death of Mr. Justice Fraser and the impending retirement of Lord Justice Bankes mean a reduction in the number of King's Bench puisnes from seventeen to fifteen; since it is very improbable that the vacancy in the Court of Appeal will be filled direct from the Bar, as was done in the case of Fletcher-Moulton, L.J. The King's Bench appointments cannot be made in the ordinary way by His Majesty; for the Judges to be appointed will be the "two additional Judges" authorised by the Supreme Court of Judicature Act of 1910, and vacancies must be filled according to the provisions of S. 1 (2) of that Act, as now appearing in S. 11(1) (*a*) of the Consolidating Act of 1925. "Whenever the whole number of the puisne Judges attached to the King's Bench Division amounts to fifteen or upwards, a vacancy occurring among those Judges shall not be filled unless and until an address is presented to His Majesty from both Houses of Parliament representing that the state of business in that Division requires that the vacancy should be filled." There is no doubt that the state of King's Bench business does so require. It is a curious fact that recourse to Parliament would have been

unnecessary for filling the vacancy created by Mr. Justice Fraser's death, if the Bill of 1910 had been passed in its original form and so continued; for, prior to its amendment in Committee, the draft Bill required a Parliamentary address only when the number of the King's Bench Judges amounted to "upwards of fifteen".

—*The Law Journal*, July 30, 1927, p. 82.

"Right Honourables."—One of those occasional points of etiquette that afford opportunity for individual Members of Parliament to distinguish themselves at question-time, arose on Monday when the Home Secretary was cross-examined about the right of sundry Lord Mayors to be addressed as "Right Honourable". Sir William Joynson-Hicks' reply seems to have been unassailable. He laid it down that the style or title "Right Honourable"

> "like other titular distinctions, can only be conferred by grant from the Sovereign as the fountain of honour. The only Lord Mayors and Provosts in the United Kingdom who are entitled to be styled 'Right Honourable' are the Lord Mayors of London and York and the Lord Provost of Edinburgh, who have had the privilege from time immemorial, and the Lord Provost of Glasgow and the Lord Mayor of Belfast, on whom it has been conferred by grant in modern times."

There is a real danger, in these days, lest everything in the way of honours and distinctions shall become too common to be worth retaining at all, and the Home Secretary is to be commended for the stand he has made on this occasion. Incidentally, it is of interest to note what the Oxford Dictionary has to say of the titles "Hon." and "Right Hon." about which there is much misconception:

> *Honorable*—Title (abbr. *Hon*) of children of Peers below rank of Marquess, Maids of Honour, Justices of High Court, Lords of Session, members of Government or Executive Councils in India and Colonies; *Most Hon*, title of Marquesses, Order of Bath and Privy Council; *Right Hon*, title of Peer below rank of Marquess, Privy Councillors and others.

—*The Law Journal*, July 30, 1927, p. 83

BOOK REVIEWS.

THE CODE OF CIVIL PROCEDURE WITH COMMENTARIES, by Dr. Nand Lal, B. A., LL. D., Advocate, Lahore. 1926. Published by the Lahore Law Journal. Price Rs. 25.

This is truly an encyclopædic work on the Law of Civil Procedure in this country in three volumes, the first volume

dealing with the sections of the Code, the second volume giving the commentaries on the first schedule and appendices from A to H and the third comprising Schedules II, III and IV, the Letters Patent of all the High Courts in British India, Rules framed by the several High Courts under S. 122 of the Code, the High Courts Act and the Government of India Act, Part IX, the Statement of Objects and Reasons, Reports of the Select Committee, table of cases and general index. The Code of Civil Procedure being an enactment in constant use throughout the country, several authoritative and valuable commentaries of the Act have appeared from time to time, some carrying the authority for their statements of law by the eminence and position of their authors, some noted for the lucidity and accuracy of the enunciation of principles and others serving as collections of the decided cases under appropriate headings which are very useful to a busy practitioner. This work being the latest in the field has combined in itself all the advantages to be derived from the earlier treatises and rightly claims to be an encyclopaedia of all the learning on the Law of Civil Procedure. We do not think anybody has reason to complain of its bulk seeing the variety of matter contained in it and that no decision of any importance whether in the authorised reports or any important non-official legal journal has been omitted. Though some authors have omitted in their works reference to non-official journals and the decisions reported therein, we venture to think that they are necessarily incomplete as the authority of precedents, where their authority is recognised, does not rest on the discretion of the reporter of an official legal journal but on the tribunal making the pronouncements. We therefore agree with Dr. Nand Lal in thinking that the inclusion of decisions reported in non-official legal journals is essential for an exhaustive treatment of any branch of law and especially in the case of procedure which has sometimes to deal with complex and even novel situations. Seen from every point of view, the treatise under review is one of the most exhaustive and authoritative works and will shortly take its place among the foremost works on the subject.

THE LAW OF COMPULSORY LAND ACQUISITION AND COMPENSATION, by S. G. Velinker, B. A., LL. B., Barrister-at-Law, assisted by N. G. Nadkarni and V. S. Velinker, second edition, 1927. Price Rs. 16.

We had occasion to review the first edition of this book in our pages and the necessity for the appearance of the second edition in less than two years is to our mind a sufficient indication of its usefulness. Since the publication of the first edition, the City of Bombay Improvements Trusts Act of 1898 has been repealed by the City of Bombay Improvements Trusts Act of 1925 which came into operation on the 31st March, 1926. The learned author has given a synopsis of its provisions and added it as an introduction to its commentary. The case-law which has come into existence since the last edition has been carefully noted and brought up-to-date. We have no doubt that this edition fully maintains the high level of its predecessor and the book will continue to be looked upon as a standard work on the Indian Law of Compulsory Land Acquisition and Compensation.

THE DETECTION OF FORGERY, by P. Ramanatha Aiyar and N. S. Ranganatha Aiyar, Pleaders, Trichinopoly. Price Rs. 6.

This is one of the numerous publications useful to lawyers brought out by Mr. P. Ramanatha Aiyar who is well known as a writer on legal topics. This book furnishes a study in handwriting and collects all the useful information contained in well-known books on the subject which are not easily accessible to all lawyers, Judges and Magistrates, especially in the moffusil. It is easy to exaggerate the value of expert evidence relating to handwriting. It is, however, necessary to bear in mind in this connection what a well-known authority Dr. Lawson has to say in what is termed "expert evidence" : "The evidence of the genuineness of the signature based upon the comparison of handwriting and the opinion of experts is entitled to proper consideration and weight. It must be confessed, however, that it is of the lowest order of evidence or of the most unsatisfactory character. We believe that in this opinion experienced laymen unite with the members of the legal profession. Of all kinds of evidence admitted in a court, this is most unsatisfactory. It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence." If this estimate of expert evidence is correct, we have no reason to regret that there are very few experts in this country. We venture to join issue with some observations in the foreword that a great many Indian lawyers are sadly deficient in their ability to weigh facts and forming a correct judgment on comparing testimony and appraising the

credibility of witnesses. It is somewhat remarkable that there underlies this statement an assumption that Englishmen whether lawyers or Judges mostly unacquainted with the customs and manners and even the languages of this country are better able to judge of the credibility of evidence adduced before them than Indian lawyers and judges who can enter into the motives of the people by their intimate knowledge of the conditions of their country. On the other hand, it is well known that European barristers do not succeed at the bar here, largely owing to their ignorance of the customs and manners and languages of this country. We also fail to see how a decision arrived at, as in England, by members of the jury who are drawn from the common multitude, can in any way be superior to the judgment on facts by persons who are trained for a lifetime in the sifting and appreciation of evidence. We venture to think these statements themselves sufficiently carry the refutation of the assumption. With all the limitations of a book dealing with facts and not law, we believe that this book will be found useful.

A Comparative Study of the Law of Insolvency in British India, by D. B. Kshirsagar, B. A., LL. B., Poona.

This is a book which gives a comparative study of the provisions of the Presidency Towns and Provincial Insolvency Acts, with explanatory commentaries under the sections. The commentaries are not burdened by references to case-law and consequently the book will be found useful to the student and the beginner in the profession.

Trial of Madeleine Smith. Edited by F. Tennyson Jesse. (Notable Trial Series). Published by Messrs. Butterworth & Co., Ltd. Price Rs. 6-8-0.

This is another of this interesting series. It maintains the finish and the interest of the previous numbers. We have no doubt that the legal practitioner will find in it much that is of interest and assistance to them. Of course, we are not among those who believe that these publications are or ought to interest the lay public because that interest is likely to be of a morbid and not of a healthy or desirable kind.